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In re Application of	:	DECISION
EBERL et al.	:	
Application No.: 10/551,179	:	
PCT No.: PCT/EP02/04030	:	
Int. Filing Date: 10 April 2002	:	
Priority Date: 22 May 2001	:	
Attorney Docket No.: 101795.56308US	:	
For: METHOD AND SYSTEM FOR	:	
PROVIDING INFORMATION ON THE EYE	:	

This decision is in response to applicants' renewed petition under 37 CFR 1.137(b) filed in the United States Patent and Trademark Office (USPTO) on 22 January 2007.

BACKGROUND

On 10 April 2002, applicants filed international application PCTEP02/04030 which designated the U.S. and claimed a priority date of 22 May 2001. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 28 November 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 24 November 2003 (22 November 2003 being a Saturday).

On 29 September 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee, an assertion of small entity status, and a petition under 37 CFR 1.137(b) to revive the application.

On 30 August 2006, a decision was mailed dismissing applicants' petition under 37 CFR 1.137(b) without prejudice because it was not clear that the statement regarding unintentional abandonment was provided by the relevant party.

On 20 October 2006, applicants submitted a renewed petition under 37 CFR 1.137(b) which was accompanied by, *inter alia*, a statement signed by Heinrich Eberl and an English translation thereof which appears to be dated September 2003, a statement signed by Robert Buecher dated September 2003, a statement from Dr. Martin Prager to David Dickerson dated 20 November 2003 and a partial translation thereof, and an assignment in English from Roland H.C.

Eberl to David Dickerson dated 13 June 2005.

On 22 November 2006, a decision was mailed dismissing without prejudice applicant's petition under 37 CFR 1.137(b). Specifically, it was noted that the delay from at least November 20, 2003, when the bankruptcy trustee purportedly transferred the rights to Mr. Dickerson, until the filing of the U.S. Basic National Fee on 29 September 2005 had not been adequately explained.

On 22 January 2007, applicants filed the instant renewed petition under 37 CFR 1.137(b) which was accompanied by a declaration of facts by David P. Dickerson.

DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicants submitted the basic national fee on 29 September 2005.

As to item (2), applicants submitted the petition fee on 29 September 2005.

Item (3) still has not been satisfied. The declaration of facts by Mr. Dickerson has been considered. The delay from at least November 20, 2003, when the bankruptcy trustee purportedly transferred the rights to Mr. Dickerson, until the filing of the U.S. Basic National Fee on 29 September 2005 still has not been adequately explained.

MPEP § 711.03(c), II. D., states that "where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as 'unintentional' within the meaning of 37 CFR 1.137(b)."

The declaration states that until the fall of 2006, Mr. Dickerson was of the belief that each of the six PCT applications he desired to prosecute needed to be translated into English to enter the U.S. national stage and that he desired to translate the six applications himself (paragraphs 11 and 19). In April of 2005, it was agreed that applicant's representative would be responsible for the translations (paragraph 30 of declaration). However, from November 2003 until that time, it does not appear that applicant translated any of the six applications referred to.

The declaration also states that until the spring of 2003 applicant believed that failure to timely enter the US national stage is a terminal deficiency (paragraph 14). However, it does not appear that applicant attempted to investigate the matter until November of 2004 when he

contacted his present US attorney (paragraph 27).

The declaration gives numerous other reasons for the delay between January 2004 and February 2005: preparing 2002 German tax return (paragraph 21); studying for the "European Qualifying Exam" (EQE) for admittance to the EPO bar (paragraph 22); legal battle over responsibility for water damage to apartment (paragraph 23); sick for several weeks (paragraph 24); inheritance of a small sum of money from a relative in the U.S. (paragraph 25); searching for office space and setting up office (paragraph 26); and prosecuting "the six Euro-PCT applications" and studying for a re-sit of the EQE (paragraph 28). However, possibly aside from being sick for several weeks, these delays merely show how applicant decided to spend his time. A delay due to applicant's deliberately choosing other priorities over filing the instant application appears to be an intentional delay.

Mr. Dickerson first contacted his present US patent attorney on 10 November 2004. A reply was received requesting more detailed information on 24 November 2004. (Paragraph 27 of Declaration.) Mr. Dickerson replied to his attorney on 13 February 2005, and on 26 February 2005 the attorney tentatively agreed to take over representation. (Paragraph 29 of Declaration.) As noted above, the delay from January 2004 to February 2005 appears to have been due to applicant's deliberately choosing other priorities over filing the instant application. Mr. Dickerson gave the documents, which needed to be translated, for the instant application (PCT/EP02/04030) to his attorney on 24 April 2005. (Paragraph 30 of Declaration). The delay between 24 April 2005 and 29 September 2005 has not been adequately explained. Mr. Dickerson again details items he spent his time on during that time, but again, this appears to be a matter of prioritizing. Applicant's representative has not explained the delay during this time period either.

CONCLUSION

The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice, for the reasons set forth above.

Applicant is hereby given the time limit of **TWO (2) MONTHS** from the mail date of this communication in order to file a proper response.

Failure to timely file a proper response to this decision in a timely manner will result in abandonment of the application with regards to national stage prosecution in the United States.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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